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No. 05-

IN THE

Supreme Court of the United States

PAUL J. SCHLAFLIN,

Petitioner,

v.

RICHARD BOROWSKY, JAY F. FOX, PHILLIP CAMPO, STEVE MENNONA, GEORGE TRAMPLER, and ROBERT C. HOLMES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does qualified immunity protect police officers who effect an arrest pursuant to a State statute that violates axiomatic constitutional principles?

2. Once this Court reverses a criminal conviction because an *actus reus* was constitutionally protected, are police officers who make a subsequent arrest for an act of the same nature entitled to qualified immunity?

LIST OF PARTIES

Petitioner is Paul J. Schlaflin. Respondents are Richard Borowsky, Jay F. Fox, Phillip Campo, Steve Mennona, George Trampler, and Robert C. Holmes.

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PETITION FOR A WRIT OF CERTIORARI

Paul J. Schlaflin respectfully petitions for a Writ of Certiorari to review a judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The decision of the Third Circuit is reported at 128 Fed.Appx. 258 (App. 1a). The unpublished decision of the district court granting summary judgment in favor of Respondents was issued on June 7, 2004 (App. 9a).

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was filed on April 12, 2005 (App. 7a). An order denying rehearing and denying rehearing *en banc* was entered on May 23, 2005 (App. 12a). This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Third Circuit by Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech[.]"

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of